GREENWAY
COMMUNICATIONS

July 20, 2018

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155

Dear Ms. Dortch:

Greenway Communications, LLC ("Greenway") is a Rural Competitive Local Exchange Carrier in accordance with 47 C.F.R. §61.26(a)(6) operating in Iowa. Greenway's goal is to help Americans in rural Iowa connect to the content of their choice. Greenway became aware of this docket and it wishes to comment on the initial NPRM issued in the above referenced proceeding issued on May 17, 2018.

The first issue that Greenway wishes to provide comment is the FCC's current definition of Access Stimulation. Greenway provides the following:

(1) A rate-of-return local exchange carrier or a Competitive Local Exchange Carrier engages in access stimulation when it satisfies the following two conditions:

> "The LEC must have a 'revenue sharing agreement,' which may be '***express, implied, written or oral***' that "over the course of the agreement, would directly or indirectly result in a net payment to the other party" Also, "the LEC must also meet one of two traffic tests. An access-stimulating LEC either has "an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month," or ***"has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year."*** Even if a LEC no longer meets either of these traffic tests, once it is considered to have engaged in access stimulation, this

regulatory classification persists so long as the LEC maintains any revenue sharing agreement."[1]

Greenway respectfully points out that any newly operational CLEC automatically triggers the test of having more "than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year" during their first year of service. The unintended consequence of this law is that CLEC's could be inaccurately labeled as an "access stimulator" simply by beginning to provide services. This could prompt large interexchange providers to claim its competitor is guilty of access stimulation when in fact they are not. The large IXC would be able to "assume" an oral contract exists, label their competitor/provider of access services as an access stimulator and simply not pay their access charges. This puts the competitive service provider at a severe disadvantage and as such, would not be in the public's best interest.

Greenway respectfully requests the FCC modify the methodology by which a carrier is classified as an "access stimulator". Greenway believes that neither self-reporting nor competitor designation is an accurate and/or adequate determination of such a regulatory designation. Greenway implores the FCC to maintain the sole jurisdiction that determines and classifies carriers as "access stimulators". The implications of such a regulatory designation are so great, the designation should not be trusted to anyone except the FCC.

The second significant matter that requires comment is the NPRM's proposed switch of Financial Responsibility.

The initial NPRM "Propose(s) to offer access-stimulating local exchange carriers (LECs) two options for connecting to interexchange carriers (IXCs)." The two options are:

1. To bear financial responsibility for the delivery of terminating traffic to its end office or the functional equivalent, including applicable intermediate access provider terminating charges normally assessed on an Interexchange Carrier (IXC); or
2. To accept direct connections from either the IXC or an intermediate access provider of the IXC's choice, allowing the IXC to bypass intermediate access providers imposed by the access-stimulating LEC.[2]

This proposal allows IXC's to force R-CLEC's like Greenway to bear the expense and time to essentially give its services away to any carrier sending traffic to its network. This problem is

[1] 47 CFR 61.3(bbb)

[2] Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage**,** FCC Notice of Proposed Rulemaking – WC Docket No. 18-155

compounded when the IXC labels a R-CLEC as an "access stimulator". In the scenario proposed, the IXC has carte blanche ability to refuse to pay both the R-CLEC and the tandem provider for legitimately delivered traffic. With the proposed required direct connect, Greenway intreats the FCC to clearly mandate that any IXC requesting direct access to a terminating access tandem that it be required to establish an account with the Access Tandem provider and pay for the termination of its traffic. Requiring competitors to give any part of their network away flies in the face of the Telecommunications Act of 1996 (the Act).[3] This proposed law as written would result in complaints to the FCC Enforcement for something that could simply be clarified in this rulemaking.

The third significant matter that requires comment is NPRM's para 28: "is there a subset of such activities that we should separately identify as unlawful?"

Greenway submits that true "access arbitrage" occurs when traffic is sent over the telecommunications networks or Public Switched Telephone Network ("PSTN") with the sole purpose of collecting access charges. This is "ghost traffic" with no real purpose or service. It is a dialer sitting in an empty office, dialing telephone number after telephone number. It is the set up of computers that have been programmed to dial telephone numbers without cessation.

We cannot forget that there are legitimate uses of networks that are financially supported through access charges. These legitimate services have been cited as part of access arbitrage. The FCC website states that "traffic pumping," occurs when a local carrier with high access charge rates enters into an arrangement with another company with high call volume operations, "***such as chat lines, adult entertainment calls, or "free" conference calls."***[4] All of the listed call types have a purpose and provide a service to consumers. In our experience, chat lines become prayer lines and free conference calls provide an otherwise expensive service to small businesses for free. There are also disaster recovery programs that assist in network continuity and disaster recovery, ensuring emergency services have the safe guard of 911 redundancy. That program is funded by the current access services provided in Rural areas. These services are valuable to the consumers using them. Eliminating them would not be in the public's best interest. None of these services could continue to exist should the FCC view those services as part of access stimulation arbitrage. Greenway believes these call types should be deemed legitimate traffic and not part of this

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[3] Gilroy, Angele A. (1996). The Telecommunications act of 1996 (P.L. 104-104). [Washington, D.C.]: Congressional Research Service, Library of Congress

4 https://www.fcc.gov/general/traffic-pumping

rulemaking. Universal service is a foundational principle of the Act. Understanding the concept of universal service is key to understanding the mission of the Federal Communications Commission. Listed on its website, the FCC sets forth its first strategic goal as:

> "***Promoting Economic Growth and National Leadership***.
>
> ***Promote the expansion of competitive telecommunications networks, which are a vital component of technological innovation and economic growth and help to ensure that the U.S. remains a leader in providing its citizens opportunities for economic and educational development***."[5]

Access services have been key in the growth and expansion of competitive services, offering various revenue sources for services rendered. If competitive providers are required to offer IXC's free access services, competitive providers will be forced out of business. Greenway is concerned that there may be unintended consequences when labeling certain carriers as "access-stimulators". It should be noted that the receiving network generally has no control over incoming (terminating) traffic. In a rural setting, as traffic increases, R-CLEC's do invest in upgrades to the Rural LEC's central office. These upgrades are facilities that stay within the upgraded central office for the benefit of the rural community.

Interexchange carriers seek a law that would require the local exchange carrier to offer part of its service for free. Never, in any other industry, is a competitive provider required to provide its services for free to its competitors. As a rural CLEC, Greenway provides local, long distance, toll free services, etc. to citizens in rural Iowa. The Commission's proposal is not "reciprocal" in nature. It requires R-CLECs to provide free terminating access to telephone numbers residing on its network. IXC's are the only benefiting party in the NPRM as currently written.

Sales people of telephone service have been selling wholesale services for telecom carriers since the beginning of the competitive telecommunications industry. All carriers are required by law to interconnect without discrimination. Certain products have been created and supported by transport/access charges that are unique to Rural carriers. 47 U.S.C. § 251(b)(5) provides the Commission with authority to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Greenway urges the FCC to protect traffic that provides a legitimate service and not allow IXC's be the judge and jury when determining the difference between legitimate traffic termination and access arbitrage.

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[5] https://www.fcc.gov/about/overview

Therefore, Greenway Communications, LLC respectfully prays that the Federal Communications Commission consider the true concept of "access arbitrage" and recognize that there are legitimate calling services that do rely on networks in rural areas to support legitimate services. Greenway implores the FCC to consider all aspects of this ruling as it is currently fraught with uncertainties as described herein that could be exploited to eliminate competition.

Respectfully Submitted,

/s/ Michael Hatfield

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